

Appendix B

Using Recent Change to Combine Network Elements

- (c) Recent change eliminates all of the manual processes and the associated human error inherent in the ILEC's proposals;
- (d) Recent change works for all types of loop technologies, including IDLC loops. This would eliminate the need to move a customer off of this state-of-the-art loop technology simply because the customer wants to change local service providers. It also eliminates all of the outage, cost and service degradation that occurs in moving a customer off of the IDLC system;
- (e) The automated nature of recent change does not have the same competition gating effect as the manual processes involved with collocation. Because the capacity of the recent change process is effectively limitless, it will allow for the robust competition envisioned by the Act;
- (f) Recent change is a more cost effective means to allow the CLECs to combine the elements;
- (g) Recent change does not add the additional points of failure on the ILEC's frames and the associated potential for service failure; and,
- (h) In contrast to collocation, recent change does not require the CLEC to own or control any of its own network facilities simply to be able to use combinations of network elements, consistent with the Eighth Circuit Order.

In sum, recent change puts the CLECs at near parity with the ILEC, because it is how the ILEC operates its own network in similar circumstances.



Legal Analysis of the Incumbent LEC Proposals and Recent Change

I. Introduction

Recent change is the only means of combining network elements that satisfies both the requirements of the 1996 Act and the holdings in Iowa Utilities Board v. FCC.¹ Limiting CLECs to the use of collocation and other manual methods of combining network elements, by contrast, violates both the Act and the Eighth Circuit's decision. Contrary to the ILECs' claims, nothing in either the 1996 Act or Iowa Utilities Board requires the physical separation of network elements or the combination of network elements through collocation. Indeed, the 1996 Act gives CLECs the right to choose which methods of access and combination work best for them, provided those methods are technically feasible.

The recent change process is an existing, well-established functionality of the ILECs' local switching network element. Access to the switch's recent change capability also is part of the OSS network element. Requesting carriers have the right to use these capabilities for any purpose including for the purpose of combining network elements.² For ILECs who insist on providing network elements in their separated form, recent change both accomplishes the separation of network elements contemplated by the Eighth Circuit, and provides a means of combining network elements that meets the nondiscrimination requirements of the 1996 Act. Moreover, it does so in a manner consistent with the Department of Justice's admonition that ILECs who choose to separate network elements should be required to do so in a manner that permits the most efficient recombination of those elements and minimizes the costs imposed on CLECs.³

¹ Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), *cert. granted*.

² 47 C.F.R. § 51.309(a) ("An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.").

³ Letter from Joel L. Klein, Assistant Attorney General, Department of Justice, Antitrust Division, to John O'Mara, Chairman, New York Public Service Commission, dated April 6, 1998, at 2 ("Letter from Joel Klein").

II. Limiting CLECs to Collocation and Other Manual Combination Methods Discriminates Against CLECs in Violation of Sections 251(c)(3), 252(d)(1), and 271(b)(2)(c)(ii) of the 1996 Act and the Eighth Circuit's Decision in Iowa Utilities Board.

Sections 251(c)(3), 252(d)(1), and 271(c)(2)(B)(ii) of the 1996 Act each impose on ILECs an obligation to provide competitors with nondiscriminatory access to network elements. Section 251(c)(3) requires ILECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."⁴ Section 251(c)(3) further requires ILECs to provide these network elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications services."⁵ Section 252(d)(1) provides that the rates charged by ILECs for access to unbundled network elements must be nondiscriminatory and based on cost.⁶ In addition, Section 271(c)(2)(B)(ii) requires BOCs seeking in-region interLATA authority to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."⁷

The FCC has determined that the term "nondiscriminatory access" in Section 251(c)(3) requires that ILECs provide access to network elements that is "at least equal-in-quality to that which the incumbent LEC provides to itself."⁸ The FCC also has determined that ILECs must provide such access on terms and conditions that are "no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC

⁴ Letter from Joel L. Klein, Assistant Attorney General, Department of Justice, Antitrust Division, to John O'Mara, Chairman, New York Public Service Commission, dated April 6, 1998, at 2 ("Letter from Joel Klein").

⁵ Id.

⁶ Id. § 252(d)(1)

⁷ Id. § 271(b)(2)(c)(ii)

⁸ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15658, para. 312 (1996) ("Local Competition Order"), *vacated in part in other respects sub nom., Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted*; 47 C.F.R. § 51.311(b).

provides such elements to itself."⁹ In addition, the FCC has found that "providing access or elements of lesser quality than that enjoyed by the incumbent LEC would constitute an 'unjust' or 'unreasonable' term or condition" in violation of Section 251(c)(3).¹⁰ The Eighth Circuit in Iowa Utilities Board upheld the rules implementing these determinations.¹¹

Requiring competitors to combine network elements through collocation or other manual methods discriminates against competitors in violation of the nondiscrimination and parity requirements set forth in the 1996 Act. When ILECs make changes on behalf of their own customers, they do not physically break apart and then manually reconnect network elements. Indeed, in hearings on Southwestern Bell Telephone Company's ("SWBT") application for Section 271 relief in Texas, a SWBT witness admitted that SWBT would not "in all likelihood" physically disconnect and reconnect cross-connections on the main frame when a new customer moves into a location vacated by an old customer.¹² As described above, the ILECs simply use the recent change capability in their local switches and OSS to suspend, discontinue, and initiate local service through the automated, electronic separation and reconfiguration of network elements.¹³

Requiring competitors to employ collocation -- whether physical, virtual, or otherwise -- as the means by which to combine network elements discriminates against competitors by imposing on them costs, difficulties, delays, and other limitations not incurred or experienced by ILECs when providing service over the same network elements. For example, collocation and other manual combination methods cause lengthy customer service interruptions during the conversion process, increase the risk of human error in accomplishing the combinations, and create additional points of failure by requiring multiple cross connects. As a result, collocation and other manual combination methods degrade a CLEC's service quality, result in a service that is inherently less reliable than the service the ILEC offers to its own retail customers over identical network elements, and damage a

⁹ 47 C.F.R. § 51.313(b).

¹⁰ Local Competition Order, 11 FCC Rcd at 15658, para. 312 n.676.

¹¹ Iowa Utilities Board, 120 F.3d at 819 n.39 (specifying particular portions of the Local Competition Order to be vacated and rejecting request to vacate the remainder).

¹² Testimony of Mr. William C. Deere, Witness for Southwestern Bell Telephone Company, April 22, 1998, Hearing Transcript at Tr. 773-785.

¹³ Testimony of Mr. William C. Deere, Witness for Southwestern Bell Telephone Company, April 22, 1998, Hearing Transcript at Tr. 773-785.

CLEC's reputation among consumers who see the CLEC as the culprit, not the ILEC.

Collocation and other manual combination methods also severely restrict the number of customers that can be converted to a competitor to a level far below that of an ILEC, and impose on competitors myriad costs that the ILECs do not themselves incur in providing service over the same network elements. These costs include application and administrative costs; site preparation costs; cage construction costs; equipment purchase costs; equipment installation and conductivity costs; cabling costs; power costs; maintenance costs; and the costs of leasing floor space.¹⁴

Michigan, Montana, and Texas have rejected ILEC attempts to require collocation and other manual combination methods as the only means by which competitors can combine network elements.¹⁵ In taking this action, the Montana Public Service Commission stated as follows:

¹⁴ See, e.g., Statement of Rocky N. Unruh, Counsel for LCI International Telecom Corp., Before the FCC Forum on Combinations of Unbundled Network Elements, June 4, 1998, at 6-7; Comments of Gary Ball, Vice President of Regulatory Policy, Worldcom, Inc., at the FCC Forum on Combinations of Unbundled Network Elements, June 4, 1998, at 2.

¹⁵ Application and Complaint of MCI Metro Access Transmission Services, Inc., against Ameritech Michigan Requesting Non-Discriminatory, Efficient and Reasonable Use of Unbundled Loops Using GR303 Capability, Opinion and Order, Case No. U-11583 (Michigan Pub. Serv. Comm'n June 3, 1998), at website version p. 11 ("the Commission twice recently acknowledged that collocation is not required for interconnection"), *citing, inter alia*, In the Matter on the Commission's Own Motion to Consider the Total Service Long Run Incremental Costs and to Determine the Prices of Unbundled Network Elements, Interconnection Services, Resold Services, and Basic Local Exchange Services for Ameritech Michigan, Order on Rehearing, Case No. U-11280 (Michigan Pub. Serv. Comm'n January 28, 1998) at 28.; Petition of AT&T Communications of the Mountain States Inc. Pursuant to 47 U.S.C. § 252(b) for Arbitration of Rates, Terms and Conditions of Interconnection with U.S. West Communications, Inc., Docket No. D96.11.200, Order on Supplemental Disputed Issues, Order No. 5961d (Montana Pub. Serv. Comm'n April 21, 1998), at paras. 13, 15-17, 19 ("Montana Order"); and see Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market. Order No. 25 Adopting Staff Recommendations: Directing Staff to Establish Collaborative Process, Project No. 16251 (Texas Pub. Util. Comm'n June 1, 1998), at Attachment 1, Commission Recommendation, pp.2, 4 ("Texas 271 Order"); see also Petition for Arbitration of AT&T and GTE, Order Granting Partial Reconsideration, Case No. UT-960307, (Washington Utils. and Transport. Comm'n March 16, 1998).

US West's advocacy is that CLECs can only obtain access to UNEs by collocating equipment in each central office that a CLEC wants to provide service from. Collocating a "cage" and the accompanying cost of connecting with US West's network in every central office and by every CLEC is likely to be quite costly to new entrants and perhaps to US West as well. Every CLEC wishing to use UNEs will have to collocate its own equipment in each US West central office serving area the CLEC wishes to serve. This will drive up the cost for CLECs to provide service in competition with the ILEC and may constitute a barrier to CLEC entry, which this Commission cannot support.¹⁶

Requiring competitors to combine network elements using collocation and other manual methods, while reserving for themselves the recent change capability of the local switching element, does not -- and cannot -- constitute access "equal-in-quality to that which the incumbent LEC provides to itself."¹⁷ Indeed, the ILECs' attempt to hamstring competitors in this manner constitutes a direct violation of the nondiscrimination requirements in Sections 251, 252, and 271 of the Act. The nondiscrimination requirements of the 1996 Act can only be satisfied if the ILECs permit requesting carriers to combine network elements using the same method the ILECs use in providing service to their own retail customers: recent change.

Requiring CLECs to combine network elements only through collocation also violates the Eighth Circuit's decision in Iowa Utilities Board. The Eighth Circuit held that a requesting carrier is not required to "own or control some portion of a telecommunications network before being able to purchase unbundled elements."¹⁸ Collocation, however, requires competitors to own or control network components such as frame equipment, cross-connection cabling, and the cross connects that make the combination of elements possible. Permitting carriers to combine network elements only through collocation, therefore, is prohibited.

The Massachusetts Department of Public Utilities ("DPU") recently held that a requirement that a requesting carrier install collocated facilities as a prerequisite for

¹⁶ Montana Order at para. 15.

¹⁷ Local Competition Order, 11 FCC Rcd at 15658, para. 312.

¹⁸ Iowa Utilities Board, 120 F.3d at 814.

purchasing and combining network elements violates Iowa Utilities Board.¹⁹ The DPU held that "it is clear that collocation requires a competing carrier to own a portion of a telecommunications network, so making collocation a precondition for obtaining UNE's appears to be at odds with the Eighth Circuit's findings."²⁰ The DPU went on to require Bell Atlantic "to develop an additional, alternative, or supplemental method for provisioning UNE's in such a way that they can be recombined by competing carriers without imposing a facilities-requirement on those carriers."²¹ Similarly, the Florida Public Service Commission has rejected BellSouth's proposal to require collocation to combine the loop and local switching network elements.²²

III. Recent Change Provides Entrants Nondiscriminatory Access to Combine Network Elements and Can Constitute Unbundling in Accordance with Eighth Circuit Decision

Neither the 1996 Act or Iowa Utilities Board requires unbundled network elements to be physically separated before being provided to requesting carriers. However, where collocation is the only means of combining network elements, the network elements must always be provided to the CLEC in a physically separated form.

Significantly, there is nothing in the federal Act, industry precedent or the FCC's Interconnection Order to support the proposition that unbundling requires the *physical* separation of network elements. The FCC defined unbundling in the following manner:

¹⁹ Consolidated Petitions of New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts, et al., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration of Interconnection Agreements Between Bell Atlantic-Massachusetts and the Aforementioned Companies, DP/DTE 96-73/74, 96-75, 96-83, 96-94, Phase 4-E (Massachusetts Dept. of Pub. Utils. March 13, 1998), at 13-14.

²⁰ Id.

²¹ Id. at 14.

²² In re: Motions of AT&T Communications of the Southern States, Inc., and MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., to compel BellSouth Telecommunications, Inc., to Comply with Order No. PSC-96-1579-FOF-TP and to set non-recurring charges for combinations of network elements with BellSouth Telecommunications, Docket No. 971140-TP, Order No. PSC-98-0810-FOF-TP, June 12, 1998.

We [the FCC] conclude that we should adopt our proposed interpretation that the terms "access" to network elements "on an unbundled basis" mean that incumbent LECs must provide the facility or functionality of a particular element to requesting carriers, separate from the facility or functionality of other elements, for a separate fee.²³

The standard relevant to judging whether a network element has been unbundled is by whether the *functionality* of one element is separated from the *functionality* of another.²⁴ This is particularly true because most network elements are themselves defined as a functionality and not as tangible, physical, pieces of equipment or investment. For instance, the local switching network element so central to the disputes in this proceeding is defined as the functionality of the local switch, and not the physical equipment itself. In fact, the network element itself is named the "local switching capability network element," and it is defined in terms of the functionality of the switch.²⁵

Other examples of network elements defined by function (rather than physical equipment) include interoffice transport,²⁶ operational support systems, operator systems, databases, and signaling. With modern digital loop carrier technology, even the local loop is becoming a functionality (at least from the central office to a remote concentrator near the home) and is no longer a distinct physical facility.²⁷

²³ Local Interconnection Order, at para. 268.

²⁴ The 1996 Act recognizes that it is unnecessary to define unbundled network elements in terms of physically separated facilities by defining "network elements" not only as facilities or equipment, but also as the "*features, functions, and capabilities* that are provided by means of such facility or equipment." 47 U.S.C. § 3(29) (emphasis added). Such features, functions, and capabilities include subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. Id.

²⁵ 47 CFR § 51.319 (c)(1)(C) specifically defines the Local Switching Capability to include "...all *features, functions, and capabilities of the switch*..." (emphasis added).

²⁶ In a fiber environment, both "shared" and "dedicated" transport are digital bit streams on a common fiber medium. Dedicated transport assigns specific capacity on a semi-permanent basis to a single use/user, while shared transport assigns capacity for the length of individual transmissions. The physical transmission equipment, however, is shared in either arrangement.

²⁷ The only network element typically provisioned as a defined physical element is the Network Interface Device (NID) used in residential applications -- yet no ILEC is proposing a

Because network elements are typically defined by their underlying functionality -- and, with respect to the local switching capability network element, defined expressly by its functionality -- the forced unbundling sanctioned by the Eighth Circuit is accomplished once the functionality of two elements is separated. This is the limit of the ILEC's legal authority. Any action in excess of this measure (for instance, a physical disruption of underlying facilities) goes beyond their legal right and is nothing more than an attempt to impose unnecessary costs on their rivals that they themselves can avoid.

Electronic separation accomplishes this separation of functions and capabilities, and therefore satisfies the separation contemplated by the Eighth Circuit for ILECs that insist on delivering network elements in their separated form. Indeed, the recent change process separates and reconnects network elements "as clearly as if [the ILEC] had gone and ripped all those connections out."²⁸ Moreover, electronic separation provides a means of separating network elements consistent with the Department of Justice's recent statement that ILECs who choose to separate network elements should be required to so in a manner that permits the most efficient recombination of those elements and minimizes the costs imposed on CLECs.²⁹

In addition, the Eighth Circuit's statement (in connection with its holding that a CLEC may achieve the capability to provide services completely through access to network elements) that it would expect the combination of network elements by CLECs to impose some costs and risks on CLECs that resale does not impose (Iowa Utilities Board, 120 F.3d at 815) similarly supports the use of recent change. While recent change is the most efficient means by which a competitor can combine network elements, recent change still imposes costs. The question under the Act, however, is not whether a method of combining elements imposes costs on a CLEC. The question is whether the costs imposed on a CLEC are greater than or the same as those imposed on the ILEC. With collocation, the costs imposed on a CLEC are greater than those imposed on the ILEC. With recent change, the costs imposed are the same -- precisely what the Act requires.

single limitation on providing this element in combination with the loop (so far).

²⁸ Post-Hearing Brief of AT&T Communications of the Southwest, Inc. filed in Investigation of Southwestern Bell Telephone Company's Entry Into The InterLATA Telecommunications Market, Texas Public Utility Commission Project No. 16251 (submitted May 6, 1998), at 48, *quoting* Testimony of Nancy Reed Krabill, April 22, 1998, Hearing Transcript at Tr. 527.

²⁹ Letter from Joel Klein at 2.

IV. The Act Gives CLECs The Right To Combine Network Elements Using Any Technically Feasible Method.

The 1996 Act gives competitive carriers the right to choose which methods of access and combination work best for them, provided those methods are technically feasible. As stated above, Section 251(c)(3) requires ILECs to provide competitors with "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point,"³⁰ and further requires ILECs to provide these network elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications services."³¹ The Eighth Circuit upheld the FCC's definition of "technically feasible" as referring "solely to technical or operational concerns," as well as the FCC's conclusions that economic, space, or site considerations may not be considered in determining technical feasibility.³² The Eighth Circuit also upheld Section 51.5 of the FCC's rules, which defines "technically feasible" by referencing collocation and "other methods of achieving interconnection or access to unbundled network elements,"³³ and left undisturbed Section 51.321 of the FCC's rules, which states that technically feasible methods of access to UNEs include, "*but are not limited to,*" physical and virtual collocation at the incumbent's end offices."³⁴

Neither Section 251(c) nor any other provision of the Act, therefore, contains any language limiting the methods by which ILECs must permit competitors to combine network elements. Likewise, nothing in the FCC's rules or Iowa Utilities Board limits the methods by which CLECs may combine network elements. The inclusion of Section 251(c)(6), imposing on ILECs a duty to "provide . . . for physical collocation" (or, if not practical for technical reasons or because of space limitations, virtual collocation), simply expands the right of competitive carriers to combine network elements by any technically feasible

³⁰ 47 U.S.C. § 251(c)(3)

³¹ Id.

³² Local Competition Order, 11 FCC Rcd at 15602, para. 198; Iowa Utilities Board, 120 F.3d at 810.

³³ 47 C.F.R. § 51.5; Iowa Utilities Board, 120 F.3d at 810 (emphasis added).

³⁴ 47 C.F.R. § 51.321.

method.³⁵ Had Congress intended to limit the method of combining network elements to collocation, it could easily have done so by either including such a limitation in Section 251(c)(3) or stating in Section 251(c)(6) that ILECs have a "duty to provide . . . *only* for physical collocation." But Congress did not do so.

³⁵ Indeed, the legislative history of the 1996 Act shows that Congress included this explicit requirement in response to the D.C. Circuit's holding in Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994) that the FCC lacked authority to require LECs to provide physical collocation as part of the FCC's expanded collocation requirements for competitive access services.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Second Application of)	
BellSouth Corporation, <u>et al.</u>)	CC Docket No. 98-121
For Provision of In-Region,)	
InterLATA Services in Louisiana)	

**AFFIDAVIT OF CHRISTOPHER J. ROZYCKI
ON BEHALF OF ITC^DELTA COM**

I, Christopher J. Rozycki, being of lawful age and duly sworn upon my oath, depose and state:

1. My name is Christopher J. Rozycki. I am the Director – Regulatory Affairs for ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom ("ITC^DeltaCom"). My business address is 700 Boulevard South, Suite 101, Huntsville, Alabama 35802.
2. ITC^DeltaCom is a member of the Competitive Telecommunications Association ("CompTel"). This Affidavit is submitted in connection with CompTel's opposition to BellSouth Corporation's ("BellSouth") application to provide in-region InterLATA services in Louisiana. The purpose of my Affidavit is to describe to the Federal Communications Commission (the "FCC") how BellSouth has failed to provide nondiscriminatory access to its Operational Support Systems ("OSS").
3. I have 25 years of experience in telecommunications and other regulated industries. Before joining ITC^DeltaCom in March 1998, I was employed by Hyperion Telecommunications, Inc. as Director of Regulatory Affairs. I directed all aspects of Hyperion's regulatory activity in twelve states and before the FCC. This included filing for CLEC certification in these states, and creating and/or amending over 40 state and federal tariffs for local, access, long distance, and dedicated services. I coordinated filings before the FCC and state commissions, including: Virginia, Pennsylvania, New York, New Jersey, Vermont, Tennessee, Louisiana, and South Carolina. Additionally, I have testified before the Vermont, New York and Mississippi state regulatory commissions. Between 1983 and 1997, I was employed by AT&T. During my tenure there I held positions in Treasury/Finance

(regulatory), Law & Government Affairs (docket management), Access Management (access-price negotiations), and Network Services Division (cost analysis of local infrastructure). While in Access Management, I testified before the Pennsylvania Public Utility Commission and the Delaware Public Service Commission on subjects like LEC-access pricing and regulation. Before joining AT&T, I was a consumer advocate in Fairfax County, Virginia. Between 1982 and 1983, I represented county ratepayers in electric, gas, and telephone rate cases. I testified before the Virginia State Corporation Commission on several occasions, generally on the subject of rate of return. As a partner in an energy and regulatory consulting firm from 1979 to 1982, my responsibilities included all of the firm's regulatory work for the Department of Energy. Early in my career I was employed as an economist for two public-utility consulting firms that specialized in utility rate-case work on behalf of consumer advocates and state commissions and as an economist for the US Department of Energy, where I evaluated the impact of energy-conservation regulations. I hold a master's degree in Economics from George Mason University and a bachelor's degree in Economics from Georgetown University.

4. ITC^DeltaCom obtained authority from the Louisiana Public Service Commission to provide competitive local exchange services on August 21, 1997.¹

¹ NOTE: The following are corrections to the affidavit of Mr. Gary Wright submitted by BellSouth Telecommunications, Inc.

138. ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom ("ITC^DeltaCom") is owned by Interstate FiberNet, Inc., which is owned by ITC^DeltaCom Inc., and is headquartered in West Point, Georgia. ... ITC^DeltaCom also offers Internet connectivity service, connecting businesses to the Internet over its high-performance ATM and frame relay network. ITC^DeltaCom is not affiliated with MindSpring Enterprises, Inc.
139. The companies mentioned here, PowerTel and Knology Holdings, Inc. are not affiliated with ITC^DeltaCom. In late 1997, ITC Holding Company effected a corporate reorganization in which ITC^DeltaCom, Inc. and its subsidiaries were structurally separated from the rest of ITC Holding Company's businesses. Prior to the reorganization, all of the ITC Holding Company businesses (including ITC^DeltaCom) were owned by the same common parent - ITC Holding Company. This information is publicly available through ITC^DeltaCom, Inc.'s filings with the Securities and Exchange Commission.
140. MindSpring is not affiliated with ITC^DeltaCom.

**I. BellSouth's Failure to Provide
Non-Discriminatory Access to OSS**

5. BellSouth continues to fail to provide competitive local exchange carriers ("CLEC's") nondiscriminatory access to its OSS. The end result is that ITC^DeltaCom is unable to provision alternative local service in the same time and manner as BellSouth provides to its retail end users. Some of the deficiencies in BellSouth's OSS include:

Ordering

6. BellSouth has argued that high percentages of CLEC orders do not flow through in a timely manner due to CLEC errors. ITC^DeltaCom performed an analysis of the orders submitted to BellSouth between March and May, 1998. The results revealed that ITC^DeltaCom received error rejection notices from BellSouth in 16% percent of the orders submitted regionwide. A majority of these errors appear to be generated by problems in the current BellSouth ordering system. For instance, USOC codes change almost daily, and it is difficult for a small CLEC to keep pace with these changes. Other problems include address validation, directory listings, and improper Q accounts.
7. On several instances, ITC^DeltaCom has lost customers back to BellSouth because BellSouth has failed to provide the same provisioning intervals to CLECs as it does to its retail customers. In one particular case, ITC^DeltaCom lost a local account back to BellSouth because the customer wanted to add 3 way calling/call transfer to their account and needed this feature as soon as possible. While the customer subscribed to ITC^DeltaCom, BellSouth missed the first conversion date and then committed to add the features, but refused to guarantee that the features would be added in less than 5 days. ITC^DeltaCom then informed its customer that it could not guarantee a less than 5 day interval to add the feature to the customer's line. However, when the customer called Bellsouth directly, the customer was instructed that if the customer converted back to Bellsouth, the customer could obtain these features in less than 48 hours. Because of this, the customer cancelled his local order with ITC^DeltaCom and returned back to BellSouth.

141. BellSouth failed to mention (maybe they don't know) that ITC^DeltaCom has local customers in six states (AL, FL, GA, LA, NC, and SC).

Order Status Notices

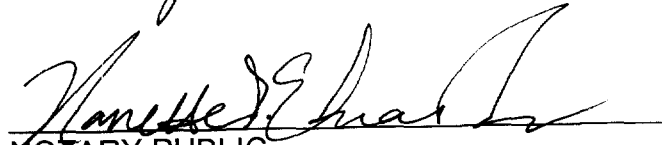
8. Frequently, BellSouth fails to provide ITC^DeltaCom with a Firm Order Confirmation ("FOC") within 48 hours of submitting the order to BellSouth. An FOC supplies the due date of the customer's conversion to ITC^DeltaCom. Absent an order jeopardy notice, ITC^DeltaCom is supposed to rely on the FOC due date and provide that date to its customer as the date that service begins. Between March and May, 1998, ITC^DeltaCom received an FOC within 48 hours for only 54% of the orders submitted via facsimile. Moreover, ITC^DeltaCom received an FOC within 48 hours in only 35% of those orders submitted via EDI. This suggests that BellSouth's EDI is not in fact fully automated, as it does not produce the efficiencies one should experience through an electronic process. Surprisingly, faxing the order to BellSouth appears to be more efficient than submitting the order via EDI.
9. In addition, the due date supplied by the FOC was not met in 25% of the orders submitted to BellSouth. On the other hand, if BellSouth converts the customer's service prior to the FOC due date without notifying ITC^DeltaCom, the early conversion creates problems with reporting service outage problems and creates billing discrepancies. For proper billing and customer service support, ITC^DeltaCom must be able to rely on the FOC due date. ITC^DeltaCom cannot rely on the FOC due date when 25% of the orders submitted to BellSouth are not converted on that date.
10. Finally, ITC^DeltaCom does not receive disconnect notices from BellSouth on a consistent basis. A disconnect notice informs ITC^DeltaCom that the customer has either returned to BellSouth or selected another CLEC. Without a disconnect notice, ITC^DeltaCom cannot determine the date of the customer's conversion to BellSouth or another CLEC; thus, the customer continues to receive billing notices. Recently, ITC^DeltaCom learned at a workshop in Alabama that a disconnect report is available electronically and that paper notices were being used; however, when ITC^DeltaCom requested the report from its Account team, the Account team was unaware of such report. After continued efforts and a new Account team, ITC^DeltaCom should begin receiving this report in September/October. Again it is noteworthy that information is not being disseminated to CLECs in a consistent and reliable manner.

II. Conclusion

11. While ITC^DeltaCom continues to experience problems unique to other states, this Affidavit focuses on the problems ITC^DeltaCom has faced throughout BellSouth's region, including Louisiana. CLEC resale orders are not being processed by BellSouth at parity with those orders processed for its retail end users. In order to compete effectively against BellSouth, CLECs must be afforded an opportunity to access BellSouth's OSS in a non-discriminatory manner or competition in the local market will not develop.


Christopher J. Rozycki
Director - Regulatory Affairs
ITC^DeltaCom

Subscribed and sworn to before me this 3rd
Day of August, 1998.


NOTARY PUBLIC

ALABAMA AT LARGE
My commission expires:

2-15-2000